

1 Marisa Díaz, CSB No. 293072
2 E-mail: mdiaz@legalaidatwork.org
3 Christopher Ho, CSB No. 129845
4 E-mail: cho@legalaidatwork.org
5 LEGAL AID AT WORK
6 180 Montgomery Street, Suite 600
7 San Francisco, California 94104
8 Telephone: 415.864.8848
9 Facsimile: 415.593.0096

7 Beth W. Mora, CSB No. 208859
8 E-mail: bmora@moraclaw.com
9 MORA EMPLOYMENT LAW, APC
10 18 Crow Canyon Court, Suite 205
11 San Ramon, California 94583
12 Telephone: 925.820.8949
13 Facsimile: 925.820.0278

14 Attorneys for Plaintiff-Intervenor Ayesha Faiz

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 U.S. EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,

19 Plaintiff,

20 AYESHA FAIZ,

21 Plaintiff-Intervenor,

22 v.

23 FIDELITY HOME ENERGY, INC., a
24 California corporation; BRADLEY SMITH, an
25 individual; and DOES 1-49,

26 Defendants.

Case No. 19-cv-01231-JSW

**FIRST AMENDED COMPLAINT IN
INTERVENTION FOR VIOLATIONS
OF:**

- (1) TITLE VII OF THE CIVIL RIGHTS ACT
OF 1964;
- (2) 42 U.S.C. § 1981;
- (3) CALIFORNIA FAIR EMPLOYMENT
AND HOUSING ACT;
- (4) STATE TORT LAW;
- (5) CALIFORNIA LABOR CODE

JURY TRIAL DEMANDED

INTRODUCTION

1. This is an action for relief from violations by Defendant Fidelity Home Energy, Inc. (“Defendant Fidelity” or “Fidelity”), Bradley Smith (“Mr. Smith” or “CEO Smith”), and Does 1-49 (collectively, “Defendants”), of the right of Plaintiff-Intervenor Ayesha Faiz (“Plaintiff-Intervenor”) to be free from unlawful employment discrimination on the basis of her national origin and race, Middle Eastern.

2. Defendants, as Plaintiff-Intervenor’s former employers, subjected Plaintiff-Intervenor to the egregious and unlawful employment practice of forcing her, as a condition of her employment, to participate in and enforce a company policy and/or practice of refusing services to potential customers who were perceived to be of Middle Eastern or Indian national origin or race (“Policy”).

3. Defendants’ discriminatory Policy against those customers permeated all of Plaintiff-Intervenor’s work. On a regular basis, she was required to refuse services to potential customers of her own national origin and race, Middle Eastern, or instruct others to do so pursuant to Defendants’ Policy. As a person of Middle Eastern descent, this caused Plaintiff-Intervenor significant distress, anxiety, and shame.

4. Plaintiff-Intervenor witnessed Fidelity employees of all ranks, including the CEO and President, Bradley Smith, openly engage in and/or openly allow this Policy to thrive. The Policy continued even after Plaintiff-Intervenor and at least one other employee expressed their opposition to it.

5. The consequent hostile work environment, discriminatory demotion, and retaliation at the hands of Defendants forced Plaintiff-Intervenor to resign from her position.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter and parties pursuant to 28 U.S.C. § 1331, as this case involves questions of federal law. This Court also has jurisdiction pursuant to 28 U.S.C. § 1343 because Plaintiff-Intervenor seeks damages for violation of her civil rights.

7. This Court has supplemental jurisdiction over the related state law claims pursuant

1 to 28 U.S.C. § 1367(a) because those claims form part of the same case or controversy under
 2 Article III of the United States Constitution. Plaintiff-Intervenor's state law claims share all
 3 common operative facts with her federal law claims, and the parties are identical. Resolving
 4 Plaintiff-Intervenor's federal and state claims in a single action serves the interests of judicial
 5 economy, convenience, consistency, and fairness to the parties.

6 8. Venue is proper in, and Defendants are subject to the personal jurisdiction of, this
 7 Court because Defendants maintain facilities and business operations in this District, and all or
 8 most of the events giving rise to this action occurred in this District. 28 U.S.C. § 1391(b); 42
 9 U.S.C. § 2000e-5(f)(3).

10 9. Pursuant to Local Rule 3-2(d) of this District, assignment to the Oakland Division
 11 of this Court is proper because all or most of the events giving rise to Plaintiff-Intervenor's claims
 12 occurred in Alameda County.

13 **NATURE OF THIS ACTION**

14 10. This is an action brought pursuant to Title VII of the Civil Rights Act of 1964, 42
 15 U.S.C. § 2000e et seq., *as amended*, ("Title VII"), 42 U.S.C. § 1981, and California statutory and
 16 common law.

17 11. Plaintiff-Intervenor seeks injunctive and declaratory relief, compensatory damages,
 18 punitive damages, liquidated damages, unpaid wages and penalties, and her reasonable attorneys'
 19 fees and litigation expenses as remedies for Defendants' violations of her Federal and California
 20 statutory as well as common law rights.

21 12. Through this Complaint, Plaintiff-Intervenor intervenes as of right in the action
 22 commenced in this Court on March 7, 2019 against Defendant by the U.S. Equal Employment
 23 Opportunity Commission ("EEOC"), styled *U.S. Equal Employment Opportunity Commission v.*
 24 *Fidelity Home Energy, Inc.*, Case No. 4:19-cv-01231. 42 U.S.C. § 2000e-5(f)(1).

25 **PARTIES**

26 13. Plaintiff-Intervenor Ayesha Faiz is a woman of Afghan descent. She worked as a
 27 Representative Services Supervisor for Defendant Fidelity from approximately November 12,
 28 2015 until on or around December 3, 2015. Thereafter, Plaintiff-Intervenor worked for Defendant

1 Fidelity as a “Confirmer” until her resignation on December 7, 2015.

2 14. Upon information and belief, Defendant Fidelity is a California corporation with
3 its principal place of business in San Leandro, California.

4 15. Plaintiff-Intervenor is informed and believes, and thereon alleges, that Defendant
5 Fidelity at all times relevant herein was engaged in the business of selling energy efficiency
6 products, such as solar panels, and installing these products in homes.

7 16. At all times relevant herein, Defendant Fidelity had at least fifteen employees. It is
8 therefore an “employer” within the meaning of Title VII.

9 17. Defendant Fidelity is also an “employer” within the meaning of the California Fair
10 Employment and Housing Act (“FEHA”).

11 18. Plaintiff-Intervenor is informed and believes, and based thereon alleges, that at all
12 times relevant herein, Defendant Bradley Smith was the owner, President and Chief Executive
13 Officer (“CEO”) of Fidelity Home Energy, Inc. In this capacity, he had ultimate authority over
14 Fidelity’s policies and practices, including but not limited to the Policy, employee pay, and
15 employee positions.

16 19. Plaintiff-Intervenor is informed and believes, and thereon alleges, that at all times
17 relevant herein each of the Defendant Does 1-49 were responsible in some manner for the
18 occurrences and injuries alleged in this complaint. Their names and capacities are currently
19 unknown to Plaintiff-Intervenor. Plaintiff-Intervenor will amend this Complaint to show such
20 true names and capacities when the same have been ascertained.

21 **STATEMENT OF FACTS**

22 20. At all times material to this action, Plaintiff-Intervenor was employed by
23 Defendant Fidelity at its San Leandro, California office.

24 21. Defendants Fidelity and Mr. Smith hired Plaintiff-Intervenor as a Representative
25 Services Supervisor on or around November 12, 2015.

26 22. As a Representative Services Supervisor, Plaintiff-Intervenor worked in Fidelity’s
27 Representative Services Department, also known as the “Confirmer Room.” Plaintiff-
28 Intervenor’s job responsibilities included overseeing the work of Fidelity employees who worked

1 in the “Hot Data” room and took inbound calls from potential customers, and the work of
2 “Confirmers,” whose job was to confirm appointments for Fidelity employees to visit potential
3 customers’ homes to sell and/or install Fidelity’s products. Plaintiff-Intervenor, along with the
4 other supervisors in her department, also confirmed appointments.

5 23. Calls with potential customers would be made by Telemarketer Services
6 Representatives (outgoing calls) or received by employees in the “Hot Data Room” (incoming
7 calls). These employees would then create customer appointments, or “leads,” based on those
8 calls. Plaintiff-Intervenor and her supervisor peers in the Confirmer Room would, in turn, follow
9 up on these leads and confirm appointments with eligible customers.

10 24. Plaintiff-Intervenor’s supervisory duties also included occasionally filling in for a
11 supervisor, Daryl Smith, to oversee Telemarketer Services Representatives as they called
12 potential customers.

13 25. Leata Tufono, another Representative Services Supervisor, trained Plaintiff-
14 Intervenor during her first week of employment. During this training period, Ms. Tufono
15 informed Plaintiff-Intervenor that Fidelity had a policy and/or practice of not providing services
16 to potential customers of perceived Middle Eastern or Indian descent (the “Policy”). Ms. Tufono
17 instructed Plaintiff-Intervenor to avoid confirming appointments with these customers by telling
18 them there were no available appointments or that Fidelity would mail them an informational
19 packet. Neither explanation was true.

20 26. During this training, Ms. Tufono also demonstrated one way she carried out
21 Fidelity’s Policy. As Ms. Tufono and Plaintiff-Intervenor sat side by side reviewing Fidelity’s
22 database of customer appointments to be confirmed, Ms. Tufono pointed out a name she believed
23 indicated that the customer was of Middle Eastern descent. Ms. Tufono proceeded to type that
24 name into a Google search browser and search for images. Based on the images of individuals
25 she saw in the search results, Ms. Tufono concluded that the name was a “Middle Eastern” name
26 and that, therefore, she would not “run it” (i.e., confirm the appointment).

27 27. During her training period, Plaintiff-Intervenor asked Ms. Tufono why Fidelity had
28 the Policy. Ms. Tufono casually answered that she did not know.

1 28. Ms. Tufono also informed Plaintiff-Intervenor during her training that CEO Smith,
2 had a short temper and did not like to be disturbed by employees.

3 29. Throughout her employment, Plaintiff-Intervenor observed employees abide by
4 Fidelity's Policy while speaking with potential customers. For example, on a regular basis,
5 Plaintiff-Intervenor overheard employees telling potential customers who were believed to be of
6 Middle Eastern or Indian descent that Fidelity had no available appointments and/or that Fidelity
7 would send the customer information via mail, neither of which was true. On several occasions,
8 Plaintiff-Intervenor observed Fidelity employees cancel already-confirmed appointments with
9 customers of perceived Middle Eastern or Indian descent based on a non-existent scheduling
10 conflict.

11 30. Plaintiff-Intervenor also saw database and handwritten notes that further
12 demonstrated open and widespread compliance with the Policy. For example, on a regular basis,
13 Plaintiff-Intervenor saw a post-it note on an employee's computer in the Hot Data room that read
14 "NO INDIANS", or words to that effect, in all capital letters.

15 31. On an ongoing basis, Plaintiff-Intervenor observed notes left by Fidelity
16 employees in database entries for customers believed to be of Middle Eastern or Indian descent
17 that read "Not Qualified", "We Won't Run This", "Indian Name! NQ", and the like.

18 32. While conducting follow-up calls with customer leads, Plaintiff-Intervenor came
19 across a field in a Fidelity database that allowed Fidelity employees to "flag" a database entry
20 based on "ethnicity." A "flag" in a database entry signaled that employees were not to follow up
21 or otherwise provide services to the customer. Plaintiff-Intervenor clicked on this "ethnicity"
22 field and discovered a large number of database entries that had been flagged. All of the entries
23 Plaintiff-Intervenor reviewed corresponded to customers with names that could have been
24 perceived to be Middle Eastern or Indian.

25 33. As part of her duties as a Representative Services Supervisor, Plaintiff-Intervenor
26 was required to enforce Fidelity's Policy. For example, on multiple occasions, Plaintiff-
27 Intervenor had to instruct other Fidelity employees to not schedule appointments for customers of
28 perceived Middle Eastern or Indian descent or to cancel an already scheduled appointment for

1 these customers. Per the Policy, Plaintiff-Intervenor was required to tell employees in the latter
2 scenario that they should falsely tell the customer that there were no available appointments
3 and/or that Defendant Fidelity would send information via mail.

4 34. On at least two occasions, pursuant to the Policy, Plaintiff-Intervenor herself had
5 to cancel customers' appointments because of their perceived Indian or Middle Eastern descent.
6 On one occasion, a customer called into the Representative Services Department to confirm his
7 appointment for that same day. When Plaintiff-Intervenor consulted Ms. Tufono about this
8 customer's appointment, Ms. Tufono reiterated that Fidelity did not "do appointments" with
9 Middle Eastern and Indian customers. Based on this, Plaintiff-Intervenor was forced to cancel the
10 customer's appointment. On another occasion, Ms. Tufono asked Plaintiff-Intervenor to call a
11 customer to cancel his appointment because Fidelity believed the individual to be of Middle
12 Eastern descent. On both occasions, Plaintiff-Intervenor was forced to falsely tell the customers
13 that Fidelity either had no available appointments or that there had been a scheduling conflict, and
14 that Fidelity would send additional information through the mail.

15 35. Throughout her employment at Fidelity, Plaintiff-Intervenor witnessed the Policy
16 being applied to potential customers who had similar or the same names as Plaintiff-Intervenor's
17 Middle Eastern family and Middle Eastern community members.

18 36. Plaintiff-Intervenor expressed her opposition to the Policy to various Fidelity
19 supervisors throughout her employment, including to her direct supervisor, Darlene Mills, who
20 was Fidelity's Call Center Supervisor. Despite Plaintiff-Intervenor's repeated expressions of
21 disapproval and opposition to Defendant's Policy, no action was taken to remedy the matter or
22 explain the Policy. To the contrary, Plaintiff-Intervenor was advised by these individuals that it
23 was a long-standing company policy and/or practice.

24 37. Plaintiff-Intervenor also expressed her concerns about the Policy to Telemarketer
25 Services Representatives. Some of these employees complained to Plaintiff-Intervenor that the
26 Policy undermined their ability to meet their customer lead quotas.

27 38. Plaintiff-Intervenor is informed and believes that in or around the latter half of
28 November 2015, Fidelity fired Bruchell Fox, a Telemarketer Services Representative, for failing

1 to meet her quotas. Upon Ms. Fox's firing, she complained to CEO Smith and others about the
2 Policy, stating that it was discriminatory and that it caused her to fail to meet her quotas since it
3 prohibited her from creating leads for interested customers of perceived Middle Eastern or Indian
4 descent.

5 39. Sometime during the second week of Plaintiff-Intervenor's employment, Daryl
6 Smith approached Plaintiff-Intervenor while she sat in the Representative Services Department
7 alongside Ms. Tufono and Mr. Keyes. Mr. Smith asked Plaintiff-Intervenor to assist him in
8 confirming an appointment for a Spanish-speaking customer. Plaintiff-Intervenor responded that
9 she did not speak Spanish.

10 40. Plaintiff-Intervenor then informed Ms. Tufono and Mr. Keyes that she was of
11 Middle Eastern descent. Both employees responded they had thought she was "Mexican."

12 41. Thereafter, Plaintiff-Intervenor began to openly share her ethnicity with other
13 Fidelity supervisors and staff.

14 42. Plaintiff-Intervenor is informed and believes that in or around November 28, 2015,
15 CEO Smith informed Fidelity staff that they could now schedule appointments with customers of
16 Middle Eastern and Indian descent.

17 43. Despite CEO Smith's announcement, however, the Policy remained in effect.
18 Plaintiff-Intervenor continued to observe other Fidelity supervisors and employees openly
19 implement the Policy. She also continued to observe employee database and handwritten notes
20 indicating Fidelity employees still abided by the Policy.

21 44. Plaintiff-Intervenor complained to other Fidelity supervisors about the continued
22 existence of the Policy. As before, these complaints were ignored.

23 45. On or around December 3, 2015, CEO Smith publicly demoted Plaintiff-Intervenor
24 during a meeting with other supervisors. CEO Smith informed Plaintiff-Intervenor that she was
25 no longer a Representative Services Supervisor and, instead, held the position of "Confirmer."
26 He also stated to Plaintiff-Intervenor that Fidelity's Hiring Manager, Scott Johnson-Temores, had
27 told Plaintiff-Intervenor that she had been hired as a supervisor by mistake.

28 46. This public demotion humiliated and confused Plaintiff-Intervenor.

1 47. Plaintiff-Intervenor never received the bonus she was owed pursuant to the “Hot
2 Data/Rep Services Supervisor Pay Plan.”

3 48. On or around December 5, 2015, Plaintiff-Intervenor was in the Hot Data room
4 while CEO Smith conducted a role-playing exercise with a Hot Data employee while she sat at
5 her computer. The post-it note that read “NO INDIANS” was prominently displayed on that
6 employee’s computer during this exercise. Despite this post-it note being in plain view of Mr.
7 Smith, Plaintiff-Intervenor, and the other employees who were present, Mr. Smith did not take it
8 down or mention anything about it.

9 49. On or around that same day, Plaintiff-Intervenor again complained about the
10 Policy to Hot Data Supervisor Thomas Keyes. Mr. Keyes made no indication that he would take
11 any action to try to end the Policy.

12 50. As someone of Middle Eastern descent herself, Plaintiff-Intervenor was deeply
13 offended by Defendant’s Policy. Its existence, the office’s open acceptance of it, and Plaintiff-
14 Intervenor’s forced participation in it as a condition of her employment caused her significant
15 distress and anxiety. Plaintiff-Intervenor felt ashamed and degraded that she had to enforce and
16 participate in a policy and/or practice that overtly discriminated against customers of her own
17 national origin and race.

18 51. On or around December 7, 2015, Plaintiff-Intervenor resigned from her position by
19 sending a text message to Ms. Tufono. In this message, Plaintiff-Intervenor again expressed her
20 opposition to the Policy and stated that she felt forced to resign because of it. Plaintiff-Intervenor
21 stated that she had “been really uncomfortable working there since knowing the company refuses
22 to service middle easterners [sic] or Indians . . . Just imagine being black for example and going
23 to work somewhere but they say, ‘no blacks.’ It makes me sick to know we refuse to service a
24 particular ethnicity of people. We literally go out of our way to single them out.”

25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26 52. Plaintiff-Intervenor timely filed charges with the United States Equal Employment
27 Opportunity Commission, which were cross-filed with the California Department of Fair
28 Employment and Housing (“DFEH”).

53. Plaintiff-Intervenor has timely filed this action and has complied with all administrative prerequisites to bring this lawsuit.

54. On September 14, 2016, the EEOC issued Ms. Faiz a “Notice to Complainant and Respondent”, indicating that it served as her DFEH Right to Sue Notice, and that the statute of limitations for her FEHA claims would be tolled during the pendency of the EEOC’s investigation. A true and correct copy of the Notice to Complainant and Respondent is attached hereto as Exhibit A.

55. The EEOC issued Ms. Faiz a Notice of Right to Sue on March 7, 2019, in relation to her Title VII claims. A true and correct copy of the Notice of Right to Sue is attached hereto as Exhibit B.

FIRST CLAIM FOR RELIEF
[Hostile Work Environment Based on National Origin in Violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)]
Against Defendants Fidelity Home Energy, Inc. and Does 1-49

56. Plaintiff-Intervenor incorporates by reference the allegations contained in Paragraphs 1 through 55 above, as if fully set forth herein.

57. Title VII of the Civil Rights Act of 1964, as amended, makes it unlawful for an employer “(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a).

58. Defendants subjected Plaintiff-Intervenor to unwelcome conduct by forcing her, as a term and condition of her employment, to participate in and enforce their Policy of refusing services to potential customers based on their actual or perceived Middle Eastern or Indian national origin.

59. This conduct was severe and pervasive. On a regular, and sometimes daily, basis,

1 Plaintiff-Intervenor witnessed her coworkers openly abide by the Policy; observed coworkers'
2 database and hand-written notes indicating that Fidelity would not provide services to Middle
3 Eastern and Indian individuals; and herself had to participate in and enforce the Policy.

4 60. Plaintiff-Intervenor's multiple complaints to Defendants' supervisory employees
5 did not cause Defendants to rescind the Policy.

6 61. The Policy and Defendants' actions in relation thereto created a hostile work
7 environment for Plaintiff-Intervenor because of her national origin, Middle Eastern.

8 62. Plaintiff-Intervenor found her work environment to be hostile and heavily charged
9 with national origin discrimination.

10 63. A reasonable person of Middle Eastern national origin in Plaintiff-Intervenor's
11 position would have found the work environment to be hostile and polluted by national origin
12 discrimination.

13 64. Management level employees knew, or should have known, of the Policy and
14 Fidelity employees' conduct in relation thereto.

15 65. Defendants did not exercise reasonable care to prevent the creation of a hostile
16 work environment charged with national origin discrimination, and did not exercise reasonable
17 care to rescind the Policy, even after Plaintiff-Intervenor's repeated opposition to it.

18 66. As a direct, legal and proximate result of this discrimination, Plaintiff-Intervenor
19 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
20 trial.

21 67. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
22 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on national
23 origin.

24 68. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

25 **SECOND CLAIM FOR RELIEF**

26 **[National Origin Discrimination (Disparate Treatment) in Violation of Title VII of the Civil**
27 **Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)]**
28 **Against Defendants Fidelity Home Energy, Inc. and Does 1-49**

69. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the

allegations contained in paragraphs 1 through 68, above.

70. Defendants discriminated against Plaintiff-Intervenor by demoting her on the basis of her national origin, Middle Eastern.

71. Plaintiff-Intervenor's national origin was the determining factor and/or a motivating factor in Defendants' adverse employment action.

72. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to be proven at trial.

73. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on national origin.

74. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

THIRD CLAIM FOR RELIEF
[Retaliation in Violation of Title VII of the Civil Rights Act of 1964, as amended,
42 U.S.C. § 2000e-3(a)]
Against Defendants Fidelity Home Energy, Inc. and Does 1-49

75. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 74, above.

76. Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended, prohibits employers from discriminating against an employee "because [she] has opposed any practice made an unlawful employment practice by this subchapter." 42 U.S.C. § 2000e-3(a).

77. Plaintiff-Intervenor engaged in protected activity by making numerous complaints to Defendants' agents and employees about Defendants' employment practice that required Plaintiff-Intervenor, as a term and condition of her employment, to enforce and engage in the Policy of refusing services to customers based on their perceived national origin, Middle Eastern or Indian.

78. Plaintiff-Intervenor reasonably believed that this term and condition of her employment was unlawful.

79. As a result of Plaintiff-Intervenor's complaints, Defendants, their agents and/or

1 employees took materially adverse actions against Plaintiff-Intervenor, including, but not limited
 2 to, demoting her in front of her supervisor peers and constructively discharging her from her
 3 employment.

4 80. Defendants, their agents' and/or employees' retaliatory actions would deter a
 5 reasonable employee from engaging in protected activity under Title VII.

6 81. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
 7 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
 8 trial.

9 82. Defendants' unlawful actions were intentional, willful, malicious, and/or done
 10 with reckless disregard to Plaintiff-Intervenor's right to be free from retaliation.

11 83. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

12 **FOURTH CLAIM FOR RELIEF**
 13 **[Constructive Discharge in Violation of Title VII of the Civil Rights Act of 1964,**
 14 **as amended, 42 U.S.C. § 2000e-2(a)]**
Against Defendants Fidelity Home Energy, Inc. and Does 1-49

15 84. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
 16 allegations contained in paragraphs 1 through 83, above.

17 85. Defendants, and their agents and employees, created discriminatory and
 18 intolerable working conditions for Plaintiff-Intervenor.

19 86. A reasonable person in Plaintiff-Intervenor's position would have felt compelled to
 20 resign under these conditions.

21 87. Plaintiff-Intervenor did in fact resign from her position because of these
 22 conditions.

23 88. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
 24 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
 25 trial.

26 89. Defendants' unlawful actions were intentional, willful, malicious, and/or done
 27 with reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on
 28 national origin.

1 90. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

2 **FIFTH CLAIM FOR RELIEF**

3 **[Hostile Work Environment Based on Race in Violation of 42 U.S.C. § 1981]**
 4 **Against Defendants Fidelity Home Energy, Inc. and Does 1-49**

5 91. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
 6 allegations contained in paragraphs 1 through 90, above.

7 92. 42 U.S.C. § 1981(a) provides that "[a]ll persons within the jurisdiction of the
 8 United States shall have the same right in every State and Territory to make and enforce contracts,
 9 to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for
 10 the security of persons and property as is enjoyed by white citizens, and shall be subject to like
 11 punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

12 93. "Make and enforce contracts" includes the making, performance, modification,
 13 and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions
 14 of the contractual relationship." 42 U.S.C. § 1981(b).

15 94. Plaintiff-Intervenor is a "person within the jurisdiction of the United States."

16 95. Defendants subjected Plaintiff-Intervenor to unwelcome conduct by forcing her, as
 17 a term and condition of her employment, to participate in and enforce their Policy of refusing
 18 services to potential customers based on their actual or perceived Middle Eastern or Indian race.

19 96. This conduct was severe and pervasive. On a regular, and sometimes daily, basis,
 20 Plaintiff-Intervenor witnessed her coworkers openly abide by the Policy; observed coworkers'
 21 database and hand-written notes indicating that Fidelity would not provide services to Middle
 22 Eastern and Indian individuals; and herself had to participate in and enforce the Policy.

23 97. Plaintiff-Intervenor's multiple complaints to Defendants' supervisory employees
 24 did not cause Defendants to rescind the Policy.

25 98. The Policy and Defendants' actions in relation thereto created a hostile work
 26 environment for Plaintiff-Intervenor because of her race, Middle Eastern.

27 99. Plaintiff-Intervenor found her work environment to be hostile and heavily charged
 28 with race discrimination.

100. A reasonable person of Middle Eastern race in Plaintiff-Intervenor's position would have found the work environment to be hostile and polluted by race discrimination.

101. Management level employees knew, or should have known, of the Policy and Fidelity employees' conduct in relation thereto.

102. Defendants did not exercise reasonable care to prevent the creation of a hostile work environment charged with race discrimination, and did not exercise reasonable care to rescind the Policy, even after Plaintiff-Intervenor's repeated opposition to it.

103. As a direct, legal and proximate result of this discrimination, Plaintiff-Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to be proven at trial.

104. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on race.

105. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

SIXTH CLAIM FOR RELIEF

**[Race Discrimination (Disparate Treatment) in Violation of 42 U.S.C. § 1981]
Against Defendants Fidelity Home Energy, Inc. and Does 1-49**

106. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 105, above.

107. Defendants discriminated against Plaintiff-Intervenor by demoting her on the basis of her race, Middle Eastern.

108. Plaintiff-Intervenor's race was the determining factor and/or a motivating factor in Defendants' adverse employment action.

109. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to be proven at trial.

110. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on race.

111. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

SEVENTH CLAIM FOR RELIEF

[Retaliation in Violation of 42 U.S.C. § 1981]

Against Defendants Fidelity Home Energy, Inc. and Does 1-49

112. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 111, above.

113. Plaintiff-Intervenor made numerous complaints to Defendants' agents and employees about the employment practice that required Plaintiff-Intervenor, as a term and condition of her employment, to enforce and engage in the Policy of refusing services to customers based on their race, Middle Eastern or Indian.

114. Plaintiff-Intervenor reasonably believed this term and condition of her employment to be unlawful.

115. As a result of Plaintiff-Intervenor's complaints, Defendants' agents and employees took materially adverse actions against Plaintiff-Intervenor, including, but not limited to, demoting her in front of her supervisor peers and constructively discharging her from her employment.

116. Defendants' retaliatory actions would deter a reasonable employee from engaging in protected activity under § 1981.

117. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to be proven at trial.

118. Defendants' unlawful actions were intentional, willful, malicious, and/or Done with reckless disregard to Plaintiff-Intervenor's right to be free from retaliation.

119. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

EIGHTH CLAIM FOR RELIEF

[Constructive Discharge in Violation of 42 U.S.C. § 1981]

Against Defendants Fidelity Home Energy, Inc. and Does 1-49

120. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 119, above.

121. Defendants, and their agents and employees, created discriminatory and

intolerable working conditions.

122. A reasonable person in Plaintiff-Intervenor's position would have felt compelled to resign under these conditions.

123. Plaintiff-Intervenor did in fact resign from her position because of these conditions.

124. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to be proven at trial.

125. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on race.

126. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

NINTH CLAIM FOR RELIEF
[Hostile Work Environment Based on National Origin in Violation of the FEHA,
Cal. Gov't Code § 12940]
Against Defendants Fidelity Home Energy, Inc. and Does 1-49

127. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 126, above.

128. The FEHA makes it unlawful "[f]or an employer, because of the . . . national origin . . . of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment." Cal. Gov't Code § 12940(a).

129. The FEHA also makes it unlawful for an employer, "because of . . . national origin, . . . to harass an employee[.]" Cal. Gov't Code § 12940(j).

130. Defendants subjected Plaintiff-Intervenor to unwelcome conduct by forcing her, as a term and condition of her employment, to participate in and enforce their Policy of refusing services to potential customers based on their actual or perceived Middle Eastern or Indian national origin.

131. This conduct was severe and pervasive. On a regular, and sometimes daily, basis,

1 Plaintiff-Intervenor witnessed her coworkers openly abide by the Policy, observed coworkers'
2 database and hand-written notes indicating that Fidelity would not provide services to Middle
3 Eastern and Indian individuals, or herself had to participate in and enforce the Policy.

4 132. Plaintiff-Intervenor's multiple complaints to Defendants' supervisory employees
5 did not cause Defendants to rescind the Policy.

6 133. The Policy and Defendants' actions in relation thereto created a hostile work
7 environment for Plaintiff-Intervenor because of her national origin, Middle Eastern.

8 134. Plaintiff-Intervenor found her work environment to be hostile and heavily charged
9 with national origin discrimination.

10 135. A reasonable person of Middle Eastern national origin in Plaintiff-Intervenor's
11 position would have found the work environment to be hostile and polluted by national origin
12 discrimination.

13 136. Management level employees knew, or should have known, of the Policy and
14 Fidelity employees' conduct in relation thereto.

15 137. Defendants did not exercise reasonable care to prevent the creation of a
16 hostile work environment charged with national origin discrimination, and did not exercise
17 reasonable care to rescind the Policy, even after Plaintiff-Intervenor's repeated opposition to it.

18 138. As a direct, legal and proximate result of this discrimination, Plaintiff-Intervenor
19 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
20 trial.

21 139. Defendants' unlawful actions were intentional, willful, malicious, and/or
22 done with reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on
23 national origin.

24 140. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

25 **TENTH CLAIM FOR RELIEF**
26 **[National Origin Discrimination (Disparate Treatment) in Violation of the FEHA,**
27 **Cal. Gov't Code § 12940(a)]**
28 **Against Defendants Fidelity Home Energy, Inc. and Does 1-49**

141. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the

allegations contained in paragraphs 1 through 140, above.

142. The FEHA makes it unlawful “[f]or an employer, because of the . . . national origin . . . of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.” Cal. Gov’t Code § 12940(a).

143. Defendants discriminated against Plaintiff-Intervenor by demoting her on the basis of her national origin, Middle Eastern.

144. Plaintiff-Intervenor’s national origin was the determining factor and/or a motivating factor in Defendants’ adverse employment action.

145. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to be proven at trial.

146. Defendants’ unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiff-Intervenor’s right to be free from discrimination based on national origin.

147. Plaintiff-Intervenor is entitled to reasonable attorneys’ fees and costs of suit.

ELEVENTH CLAIM FOR RELIEF
[Retaliation in Violation of the FEHA, Cal. Gov’t Code § 12940(h)]
Against Defendants Fidelity Home Energy, Inc. and Does 1-49

148. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 147, above.

149. It is unlawful under the FEHA “[f]or any employer . . . or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.” Cal. Gov’t Code § 12940(h).

150. Plaintiff-Intervenor engaged in protected activity by making numerous complaints

1 to Defendants' agents and employees about the employment practice that required Plaintiff-
 2 Intervenor, as a term and condition of her employment, to enforce and engage in the Policy of
 3 refusing services to customers based on their perceived national origin, Middle Eastern or Indian.

4 151. Plaintiff-Intervenor reasonably believed this term and condition of her employment
 5 to be unlawful.

6 152. As a result of Plaintiff-Intervenor's complaints, Defendants, their agents, and/or
 7 employees took materially adverse actions against Plaintiff-Intervenor, including, but not limited
 8 to, demoting her in front of her supervisor peers and constructively discharging her from her
 9 employment.

10 153. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
 11 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
 12 trial.

13 154. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
 14 reckless disregard to Plaintiff-Intervenor's right to be free from retaliation.

15 155. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

16 **TWELFTH CLAIM FOR RELIEF**
 17 **[Failure to Prevent Discrimination and Harassment in Violation of the FEHA,**
 18 **Cal. Gov't Code § 12940(k)]**
Against Defendants Fidelity Home Energy, Inc. and Does 1-49

19 156. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
 20 allegations contained in paragraphs 1 through 155, above.

21 157. Under the FEHA, it is unlawful "[f]or an employer . . . to fail to take all
 22 reasonable steps necessary to prevent discrimination and harassment from occurring." Cal. Gov't
 23 Code § 12940(k).

24 158. Defendants, their agents, and/or employees failed to take all reasonable steps
 25 necessary to prevent discrimination and a hostile work environment based on national origin,
 26 including, but not limited to, failure to investigate Plaintiff-Intervenor's complaints regarding the
 27 Policy, failure to rescind the Policy, and failure to remedy Plaintiff-Intervenor's unlawful
 28 demotion.

1 159. Instead, Defendants created the Policy and participated in maintaining a
2 discriminatory and hostile work environment. Defendants failed to effectively investigate, stop,
3 correct, or prevent the unlawful Policy and related conditions, even after Plaintiff-Intervenor and
4 at least one other Fidelity employee complained of such matters.

5 160. As a direct, legal and proximate result of Defendants' failure to take all
6 reasonable steps necessary to prevent discrimination and harassment from occurring, Plaintiff-
7 Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to
8 be proven at trial.

9 161. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
10 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on national
11 origin.

12 162. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

13 **THIRTEENTH CLAIM FOR RELIEF**

14 **[Constructive Discharge in Violation of the FEHA, Cal. Gov't Code § 12940(a)]** 15 **Against Defendants Fidelity Home Energy, Inc. and Does 1-49**

16 163. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
17 allegations contained in paragraphs 1 through 162, above.

18 164. An employee's resignation becomes a constructive discharge under the FEHA
19 when the employer either intentionally created or knowingly permitted working conditions that
20 were so intolerable or aggravated at the time of the employee's resignation that a reasonable
21 person in the employee's position would be compelled to resign.

22 165. Defendants, and their agents and supervisory employees, intentionally created
23 and/or knowingly permitted intolerable working conditions.

24 166. A reasonable person in Plaintiff-Intervenor's position would have felt compelled to
25 resign under these conditions.

26 167. Plaintiff-Intervenor did in fact resign from her position because of these
27 conditions.

28 168. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor

1 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
2 trial.

3 169. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
4 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on national
5 origin.

6 170. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

7 **FOURTEENTH CLAIM FOR RELIEF**

8 **[Wrongful Constructive Discharge in Violation of California Public Policy]**
9 **Against Defendants Fidelity Home Energy, Inc. and Does 1-49**

10 171. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
11 allegations contained in paragraphs 1 through 170, above.

12 172. The California Unruh Civil Rights Act provides that "[a]ll persons within the
13 jurisdiction of this state are free and equal, and no matter what their . . . national origin . . . are
14 entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all
15 business establishments of every kind whatsoever." Cal. Civ. Code § 51.

16 173. The FEHA makes it unlawful "[f]or an employer, because of the . . . national
17 origin . . . of any person, to refuse to hire or employ the person or to refuse to select the person for
18 a training program leading to employment, or to bar or to discharge the person from employment
19 or from a training program leading to employment, or to discriminate against the person in
20 compensation or in terms, conditions, or privileges of employment." Cal. Gov't Code § 12940
21 (a).

22 174. It is a violation of the California public policy embodied in Cal. Civ. Code § 51 for
23 an employer to force an employee to violate that provision by requiring that employee to
24 participate in and enforce a policy and/or practice of refusing to provide services to customers
25 based on their actual or perceived national origin.

26 175. It is a violation of the California public policy embodied in Cal. Gov't Code §
27 12940(a) for an employer to subject an employee to the unlawful employment practice of being
28 forced to participate in and enforce, as a term and condition of employment, a policy and/or

1 practice that discriminates against individuals on the basis of their actual or perceived national
2 origin.

3 176. Defendants, and their agents and employees, required Plaintiff-Intervenor to
4 participate in and enforce the Policy by directly or indirectly refusing services to potential Fidelity
5 customers on the basis of their actual or perceived national origin, Middle Eastern or Indian, in
6 violation of California fundamental public policy, Cal. Civ. Code § 51.

7 177. Defendants, and their agents and employees, subjected Plaintiff-Intervenor to
8 intolerable employment conditions that violated fundamental public policy under Cal. Gov't Code
9 § 12940(a). Namely, Defendants forced Plaintiff-Intervenor to participate in and enforce, as a
10 term and condition of her employment, the Policy. This Policy discriminated against customers
11 on the basis of their national origin, Middle Eastern or Indian. As a person of Middle Eastern
12 descent, Plaintiff-Intervenor shared the national origin of many of these customers.

13 178. Plaintiff-Intervenor is informed and believes Defendants, by taking the actions set
14 forth above, wrongfully constructively terminated Plaintiff-Intervenor's employment in violation
15 of the Constitution of the State of California, Article I, Section 8, which prohibits a person from
16 being disqualified from entering or pursuing employment because of national or ethnic origin.

17 179. Plaintiff-Intervenor is informed and believes Defendants, by taking the actions set
18 forth above, wrongfully constructively terminated Plaintiff-Intervenor's employment in violation
19 of the public policy of the State of California as set forth herein, including but not limited to,
20 violation of California Labor Code Section 201 et seq. for failure to pay due and owing wages
21 including bonus monies due during employment and upon forced termination.

22 180. Plaintiff-Intervenor is informed and believes Defendants, by taking the actions set
23 forth above, wrongfully constructively terminated Plaintiff-Intervenor's employment in violation
24 of the public policy of the State of California as set forth herein, including but not limited to,
25 violations of California Labor Code Section 1102.5, which was designed to protect an employee
26 from retaliation for blowing the whistle on illegal activity including but not limited to interference
27 with Plaintiff-Intervenor blowing the whistle on illegal activity.

28 181. Defendants, and their agents and supervisory employees, intentionally created

1 and/or knowingly permitted intolerable working conditions.

2 182. A reasonable person in Plaintiff-Intervenor's position would have felt compelled to
3 resign under these conditions.

4 183. Plaintiff-Intervenor did in fact resign from her position because of these
5 conditions.

6 184. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
7 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
8 trial.

9 185. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
10 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on national
11 origin.

12 186. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

13 **FIFTEENTH CLAIM FOR RELIEF**

14 **[Wrongful Demotion in Violation of California Public Policy]**
15 **Against Defendants Fidelity Home Energy, Inc. and Does 1-49**

16 187. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
17 allegations contained in paragraphs 1 through 186, above.

18 188. It is a violation of the California public policy embodied in Cal. Civ. Code § 51
19 and Cal. Gov't Code § 12940 for an employer to take an adverse employment action, including
20 demotion, against an employee based on that employee's national origin or because that employee
21 has complained of and opposed being required to participate in and enforce a policy and/or
22 practice of refusing to provide services to customers based on their actual or perceived national
23 origin.

24 189. Defendants demoted Plaintiff-Intervenor on the basis of her national origin, Middle
25 Eastern.

26 190. Plaintiff-Intervenor's national origin was the determining factor and/or a
27 motivating factor in Defendants' adverse employment action.

28 191. Plaintiff-Intervenor made numerous complaints to Defendants' agents and

employees about the employment practice that required Plaintiff-Intervenor, as a term and condition of her employment, to enforce and engage in the Policy of refusing services to customers based on their perceived national origin, Middle Eastern or Indian.

192. As a result of Plaintiff-Intervenor's complaints, Defendants, their agents, and/or employees took materially adverse actions against Plaintiff-Intervenor, including, but not limited to, demoting her in front of her supervisor peers.

193. Plaintiff-Intervenor is informed and believes Defendants, by taking the actions set forth above, wrongfully demoted Plaintiff-Intervenor during her employment in violation of the public policy of the State of California as set forth herein, including but not limited to, violations of California Labor Code Section 1102.5, which was designed to protect an employee from retaliation for blowing the whistle on illegal activity including but not limited to interference with Plaintiff blowing the whistle on illegal activity.

194. Plaintiff-Intervenor is informed and believes Defendants, by taking the actions set forth above, wrongfully demoted Plaintiff-Intervenor during her employment in violation of the public policy of the State of California as set forth herein, including but not limited to, violations of the Constitution of the State of California, Article I, Section 8, which prohibits a person from being disqualified from entering or pursuing employment because of their national or ethnic origin.

195. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to be proven at trial.

196. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiff-Intervenor's right to be free from retaliation.

197. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

SIXTEENTH CLAIM FOR RELIEF
[Immediate Payment of Wages and Waiting Time Penalties
Pursuant to California Labor Code §§ 201-203]
Against Defendants Fidelity Home Energy, Inc., Bradley Smith, and Does 1-49

198. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the

allegations contained in paragraphs 1 through 197, above.

199. California Labor Code §§ 201 and 202 mandate that an employer pay its employees all earned wages immediately upon discharge or within seventy-two (72) hours of the employee's resignation.

200. California Labor Code § 203 authorizes an employee to recover waiting time penalties in an amount equal to the employee's daily wages for up to thirty (30) days if an employer willfully fails to pay any wages earned and due to the employee within the timeframes required by California Labor Code §§ 201 and 202.

201. California Labor Code § 558.1 provides that owners, directors, officers, or managing agents of an employer may be held liable as the employer if they violate or cause to be violated provisions regarding the nonpayment of wages.

202. Plaintiff-Intervenor was entitled to wages in the form of a bonus pursuant to Defendants' bonus policy.

203. Plaintiff-Intervenor was constructively discharged from her employment at Fidelity on or around December 7, 2015.

204. Defendants willfully failed to pay Plaintiff-Intervenor for the bonus owed her upon or within 72 hours of her constructive discharge.

205. Defendant Bradley Smith, as the owner, President and CEO of Fidelity Home Energy, Inc., violated or caused to be violated California Labor Code §§ 201 – 203.

206. Plaintiff-Intervenor is entitled to recover from Defendants waiting time penalties pursuant to California Labor Code § 203, plus interest, in an amount to be proven at trial.

207. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit

SEVENTEENTH CLAIM FOR RELIEF

[Retaliation in Violation of Labor Code § 1102.5]

Against Defendants Fidelity Home Energy, Inc. and Does 1-49

208. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 207, above.

209. California Labor Code § 1102.5 prohibits employers, *inter alia*, from retaliating

1 against an employee because the employer believes that the employee may disclose information
2 to a government agency with authority to investigate where the employee has a reasonable belief
3 that the information discloses a violation of a state or federal statute. Cal. Lab. Code § 1102.5(b).

4 210. Plaintiff-Intervenor is informed and believes and thereon alleges that because of
5 Plaintiff-Intervenor's internal complaints about the Policy, Defendants retaliatorily demoted
6 and/or constructively discharged Plaintiff-Intervenor in the belief that she would disclose
7 information concerning the Policy to a government agency with authority to investigate.

8 211. Plaintiff-Intervenor had reasonable cause to believe that the Policy violated local,
9 state or federal law.

10 212. Defendants' belief that Plaintiff-Intervenor might disclose information about the
11 Policy to a government agency with authority to investigate was a contributing factor in
12 Defendants' decision to demote and/or constructively discharge Plaintiff-Intervenor.

13 213. As a direct, legal and proximate result of the retaliation, Plaintiff-Intervenor has
14 sustained economic and emotional injuries, resulting in damages in an amount to be proven at
15 trial.

16 214. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
17 reckless disregard to Plaintiff-Intervenor's right to be free from retaliation.

18 215. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

19 **EIGHTEENTH CLAIM FOR RELIEF**
20 **[Negligent Supervision]**

21 **Against Defendants Fidelity Home Energy, Inc., Bradley Smith, and Does 1-49**

22 216. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
23 allegations contained in paragraphs 1 through 215, above.

24 217. Defendants hired and had authority to supervise Darlene Mills, Leata Tufono,
25 Thomas Keyes, and all other Fidelity managers and employees.

26 218. Plaintiff-Intervenor is informed and believes and thereon alleges that Defendants
27 knew or reasonably should have known of their employees' wrongful conduct alleged herein and
28 that their failure adequately to supervise their employees created the risk of the continued
commission, by those employees, of the wrongful conduct alleged herein and the subsequent

1 harm to persons that would result.

2 219. Defendants failed to take appropriate corrective action to address their employees'
3 wrongful conduct alleged herein. This failure resulted in the commission of the wrongful conduct
4 alleged herein, and caused Plaintiff-Intervenor to suffer injury, damage, loss or harm.

5 220. Defendant Bradley Smith, as the owner, President and CEO of Fidelity Home
6 Energy, Inc., violated or caused to be violated Defendants' duty of adequate supervision toward
7 Plaintiff-Intervenor.

8 221. As a direct, legal and proximate result of Defendants' negligence, Plaintiff-
9 Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to
10 be proven at trial.

11 222. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

12 **DECLARATORY RELIEF ALLEGATIONS**

13 223. A present and actual controversy exists between Plaintiff-Intervenor and
14 Defendants concerning their rights and respective duties. Plaintiff-Intervenor contends that
15 Defendants violated her rights under Title VII, 42 U.S.C. § 1981, the FEHA, the California Labor
16 Code and California common law. Plaintiff-Intervenor is informed and believes and thereon
17 alleges that the Defendants deny these allegations. Declaratory relief is therefore necessary and
18 appropriate.

19 224. Plaintiff-Intervenor seeks a judicial declaration of the respective rights and duties
20 of the parties.

21 **INJUNCTIVE RELIEF ALLEGATIONS**

22 225. No plain, adequate, or complete remedy at law is available to Plaintiff-Intervenor
23 to redress the wrongs alleged herein.

24 226. If this Court does not grant the injunctive relief sought herein, Plaintiff-Intervenor
25 will be irreparably harmed.

26 //

27 //

28 //

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor prays for relief as follows:

1. For a declaration that Defendants' actions, policies, and practices as alleged herein are unlawful;
2. For reinstatement;
3. For lost wages, penalties and all other compensation denied or lost to Plaintiff-Intervenor by reason of Defendants' unlawful actions, in an amount to be proven at trial;
4. For compensatory damages for Plaintiff-Intervenor's emotional pain and suffering, in an amount to be proven at trial;
5. For punitive damages in an amount to be determined at trial;
6. For liquidated damages;
7. For interest on lost wages, compensation, and damages, including pre- and post-judgment interest and an upward adjustment for inflation;
8. For an order enjoining Defendants from engaging in the unlawful acts complained of herein;
9. For her reasonable attorneys' fees and costs of suit pursuant to 42 U.S.C. § 2000e-5(k), 42 U.S.C. § 1988, Cal. Gov't Code § 12965(b), Cal. Code Civ. Pro. § 1021.5, and other laws; and
10. For such other and further relief as this Court deems just and proper.

Dated: August 13, 2019

Respectfully submitted,

Marisa Díaz
Christopher Ho
LEGAL AID AT WORK

Beth W. Mora
MORA EMPLOYMENT LAW,

By: /s/ Marisa Díaz

MARISA DIAZ
Attorneys for Plaintiff-Intervenor Ayesha Faiz

JURY DEMAND

Plaintiff-Intervenor hereby demands a jury trial in the within-entitled action.

Dated: August 13, 2019

Respectfully submitted,

Marisa Díaz
Christopher Ho
LEGAL AID AT WORK

Beth W. Mora
MORA EMPLOYMENT LAW, APC

By: /s/ Marisa Díaz

MARISA DIAZ
Attorneys for Plaintiff-Intervenor Ayesha Faiz